

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ANDREW D. WEST,

Plaintiff,

v.

EBAY, INC.

Defendant.

Civil Action No. 1:17-CV-0285 (MAD/CFH)

Removed from:
Supreme Court of the State of New York,
County of Saratoga

Index No. 330/2017

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant eBay, Inc., (“eBay”) by its attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, hereby removes the action titled, *Andrew D. West v. eBay, Inc.*, Index No. 330/2017, from the Supreme Court of the State of New York, County of Saratoga, to the United States District Court for the Northern District of New York. The grounds for removal are as follows:

Statement of the Case

1. On information and belief, Andrew D. West (“West”) filed a complaint against eBay on February 9, 2017 in the Supreme Court of the State of New York, where it was assigned Index No. 330/2017.

2. On information and belief, West served his complaint on the Secretary of State for the State of New York pursuant to New York Business Corporation Law § 306 on February 10, 2017. The Secretary of State forwarded the complaint via United States mail to eBay’s statutory agent for receipt of process in New York, who received the Secretary’s mailing on February 21, 2017.

3. West's complaint and its exhibits are attached to this Notice of Removal as Exhibit A.

4. West's complaint purports to assert five causes of action against eBay: (1) Breach of Contract/Submission & Unauthorized Use of Idea; (2) Misappropriation of Property: Misappropriation of an Idea; (3) Unfair Competition: Misappropriation of Labor, Skill, & Expenditure; (4) Promissory Estoppel; and (5) Unjust Enrichment. *See* Exhibit A at ¶¶ 62–105.

5. West's complaint purports to seek a judgment of not less than \$25,000,000.00 plus interest, late fees, and costs. *See* Exhibit A at p. 18.

6. eBay's time to answer or otherwise respond to West's complaint has not yet expired, and eBay has not yet served or filed any such response.

7. On information and belief, no further proceedings have occurred in the Supreme Court of the State of New York with respect to this action.

Grounds for Removal

8. This action is removable pursuant to 28 U.S.C. § 1441(a), which permits removal of civil actions "of which the district courts of the United States have original jurisdiction."

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties and more than \$75,000, exclusive of interest and costs, is at stake.

10. West alleges that he is domiciled in the State of New York, which makes him a citizen of that state. *See* Exhibit A at ¶ 2; *Linardos v. Fortuna*, 157 F.3d 945, 948 (2d Cir. 1998) (holding that citizenship of a natural person is determined by the state in which he or she is domiciled).

11. eBay is incorporated in Delaware and has its principal place of business in California, rendering it a citizen of those two states. *See* 28 U.S.C. § 1332(c)(1).

12. Since West and eBay, the only two parties to this action, are not citizens of the same state, there is complete diversity of citizenship between the parties. *See Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998).

13. West seeks \$25,000,000.00, exclusive of interest and costs, through this action. *See* Exhibit A at p. 18. That sum exceeds \$75,000 and therefore satisfies the jurisdictional amount-in-controversy requirement imposed by 28 U.S.C. § 1332(a).

Removal is Procedurally Proper

14. Pursuant to 28 U.S.C. § 1446(a), all process, pleadings, and orders that have been served on eBay in this action are attached to this Notice of Removal as Exhibit A.

15. This Notice of Removal is being filed within thirty days of the date eBay was served with a copy of West's initial pleading and is therefore timely. *See* 28 U.S.C. § 1446(b)(1).

16. Copies of this Notice of Removal will promptly be filed with the Clerk of the Supreme Court of the State of New York and served upon West's counsel of record pursuant to 28 U.S.C. § 1446(d).

17. eBay is the only named defendant in this action. Accordingly, no defendant is a citizen of New York, the state in which this action was filed, and the sole defendant-in-suit consents to removal. *See* 28 U.S.C. §§ 1441(b)(2), 1446(b)(2).

18. Venue for removal is proper because the United States District Court for the Northern District of New York embraces the County of Saratoga, New York, where West filed his complaint. *See* 28 U.S.C. §§ 1441(a), 1446(a).

Non-Waiver of Defenses

19. eBay appears only for the purpose of effecting removal. It expressly reserves all objections and defenses available under federal and state law, including those based on service of process, personal jurisdiction, subject matter jurisdiction, and venue. eBay reserves the right to move to dismiss West's complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure, and nothing in this Notice of Removal should be considered an admission of any fact, an admission of liability, or an admission that the allegations in West's complaint are correct or sufficient to state a claim for relief.

Conclusion

Wherefore, this Court has original jurisdiction to adjudicate this action pursuant to 28 U.S.C. § 1332, and statutory removal is proper pursuant to 28 U.S.C. §§ 1441 and 1446. The above-captioned case is hereby removed to the United States District Court for the Northern District of New York for all further proceedings.

Dated: March 13, 2017

Respectfully submitted,

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Attorneys for Defendant eBay, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on March 13, 2017, I served copies of the foregoing Notice of Removal via email and United States mail, postage prepaid, on:

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